No. 776

IN THE

Supreme Court of the United States

October Term, 1968

UTAH PUBLIC SERVICE COMMISSION,

Appellant,

vs.

EL PASO NATURAL GAS COMPANY, et al.,

Appellees.

On Appeal from the United States District Court for the District of Utah

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PETITION FOR REHEARING

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SOUTHERN CALIFORNIA GAS COMPANY and SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, Intervenors in the case below and Appellees herein, pray that this Court grant rehearing of its decision of June 16, 1969, vacating the judgment of the United States District Court for the District of Utah and remanding the cause for further proceedings.

REASONS FOR GRANTING REHEARING AS TO THAT PART OF THE COURT'S DECISION AFFECTING SAN JUAN BASIN GAS RESERVES

1. A Serious Gas Supply Shortage for 11-Million Southern California Gas Consumers will be the Immediate Direct Result of this Court's Decision of June 16, 1969, Unless the Court Grants Rehearing.

Southern California Gas Company and Southern Counties Gas Company of California are gas public utilities charged by law with the obligation of meeting the gas needs of 11-million consumers. We will be unable to fulfill that obligation if the present Court decision stands. In its attempt to create a new competitive pipeline to the California market, the Court has unwittingly issued a disastrous decision. This decision will result in a loss to the California market of an invaluable portion of the San Juan Basin gas reserves presently dedicated to serve it, during the period of critical importance to the California consumers, which is while this Court's ultimate objective is sought to be achieved by the affected parties.

It is imperative that this Court be fully informed concerning the present gas supply posture insofar as meeting the needs of the southern California gas market is concerned. Eighty percent of our gas supply comes from out of state, and we are purchasing all available local production. Growth in our market area requires that we obtain additional out-of-state volumes of approximately 160 million cubic feet per day during each and every year to maintain our present service. Transwestern Pipeline Company is unable to contract to sell us additional gas supplies because it has insufficient gas reserves to

dedicate more to the California market. Our only hope to meet our near-term needs, pending ultimately a new gas supply project such as one we contemplated with New Company, is through El Paso Natural Gas Company.

The contract with Colorado Interstate Corporation entered into by interested California parties, including our Companies, provided for an earliest possible delivery date of November, 1973. That was a realistic date as to the time required to get a new gas supply project for New Company to meet California's needs. That date must now be pushed back in the future with the still further delay created by this Court's decision of June 16, 1969.

In order to meet part of our interim needs pending any possibility of a new gas supply project for New Company, we have entered into a contract with El Paso Natural Gas Company to supply us an additional 200 million cubic feet of gas per day. We had asked El Paso to provide us with an additional 350 million cubic feet of gas per day, but El Paso was unable to contract for more than 200 million cubic feet per day because of its then contemplated limited post-divestiture gas reserves. We had hoped to contract for still additional supplies from Transwestern Pipeline Company. That hope has now vanished, in view of Transwestern's own supply situation. As to the 200 million cubic feet per day which El Paso did contract to sell to us, we have encountered substantial difficulty because of this Court's order. El Paso initially refused to file an application with the Federal Power Commission for a certificate of public convenience and necessity for said 200 million cubic feet per day because of the possible impact upon its gas reserves position of this

Court's decision of June 16, 1969. Our Companies, pursuant to their public utility duty to meet the gas needs of their customers, demanded of El Paso that it comply with its contract commitment. El Paso has now filed with the Federal Power Commission its application, and judicial notice is hereby requested of said filing of June 24, 1969, at FPC Docket No. CP69-348. Over and above the 200 million cubic feet per day increment from El Paso we will need at least 525 million cubic feet per day before November 1, 1973, and additional volumes at that time.

Our public utilities cannot meet the needs of our gas consumers if the decision of this Court results in a stripping of El Paso reserves dedicated to and absolutely required to support our California market, or if it raises such a cloud over the title to those gas reserves that the Federal Power Commission will find it impossible to certificate future gas supplies to California by El Paso pending resolution of the implications of this Court's decree.

It is the obligation of this Court to the California gas consumers, which we believe the Court intended to protect, to make abundantly clear that it is not the intent of the Court that any action be taken by the District Court that will impair the ability of El Paso to meet its existing commitments to its customers, or which would impair the meeting of the market needs of the California consumers pending any new gas supply project to California by New Company.

2. The Role of New Company in Supplying Competition to California.

The thrust of the original decision in this proceeding, *United States v. El Paso Natural Gas Co.*, 376 U.S. 651 (1964), was to restore competition for the new increments of supply to the California market. The District Court decree awarded significant additional reserves to New Company to those proposed in a prior decree, and on balance made a reasonable division of the reserves. The effect of this Court's most recent decision is to divide our presently dedicated supplies between El Paso and the emerging New Company in the apparent hope of instantly restoring competition to our present markets. The division of our presently dedicated supplies will not in any way restore competition for the new increments of demand. Such competition can only be restored by the discovery of new reserves, for if none are found there will be no gas supplies to meet our new increments of demand, regardless of whether the pipeline company involved is El Paso or New Company or some other pipeline.

The evidence in this proceeding is that there are two major potential sources of additional gas supply for the provision of competition to the California market. Our Companies presented evidence of potential gas supply available to New Company in the Rocky Mountain area of in excess of 40 trillion cubic feet (Tr. 9,439). One of the applicants presented independent evidence that it was 40 to 43 trillion cubic feet (Tr. 7,134). None of this evidence was disputed. In addition, El Paso presented evidence (Exhibit No. 46) that 400 million cubic feet per day was available from Canada. The long-term

prospects (4 to 5 years) for New Company to supply competition to California are excellent. The facts are that the United States presently is confronted with a gas supply shortage. Public notice of this fact is being taken daily. We will need every foot of gas that we can reasonably buy. It is from such new sources in addition to those reserves presently dedicated to serving California, such as San Juan Basin reserves, that gas supplies to California must come. We cannot by "fiat" create a new gas supply in the San Juan Basin which simply does not exist. Further division of the *existing* reserves can cause only harm to the California consumers. The undisputed evidence in this proceeding is that there are simply not sufficient reserves presently available to meet existing commitments to present customers of El Paso and to support a new gas supply project to California by New Company. If sufficient gas supplies are to be given to New Company out of existing developed reserves so that it may in future years mount a gas supply project to California, this can only be done by causing disastrous consequences to the California gas consumers in the interim. This is an intolerable result to this Court's efforts and desires to assist the California consumers.

3. This Court Must Demand of Itself the Same Due Process of Law that it Requires of Other Tribunals.

It is not at all surprising that the Court has unwittingly rendered such a disastrous decision, since the decision was rendered in a void. Prior to the entry of its decision which affected so vitally the issue of gas reserves, this Court neither invited any of the parties to argue the issue of the disposition of gas reserves nor, at the oral

argument on the motion of the appellant to dismiss the appeal under Rule 60, did the Court intimate that it was considering this issue or tender any questions concerning the issue to those parties who did argue on the motion to dismiss.

The Court set all oral argument on a very specific limited issue concerning whether or not "the motion of appellant to dismiss the appeal under Rule 60 and the motion of William M. Bennett for a hearing" should be granted. There was absolutely no indication by this Court that it was considering the merits of the proceeding. The Motion to Affirm filed by our Companies on December 19, 1968, was not set for briefing or oral argument. Because of the very specific disposition of the Court in setting oral argument as to what it was considering, our Companies did not participate in the oral argument since it was not directed to the merits of the proceeding but to ancillary questions. The California gas consumers have not had their day in court. Every vestige of due process

requires that this Court grant a rehearing on the issue of the division of gas reserves.

Respectfully submitted,

SOUTHERN CALIFORNIA GAS COMPANY

SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA

By JOHN ORMASA
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I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

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